IN THE SECOND DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH, FARMINGTON DEPARTMENT

STATE OF UTAH, Plaintiff, vs. JEREMY JACOB HAUCK, Defendants.	**RULING ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE** Case No. 061701179 JUDGE DARWIN C. HANSEN

This matter is before the Court on Defendants' Motion to Suppress All Evidence Discovered During a Warrantless Search of His Home . The Court held a hearing on this matter on January 23, 2007, and again on March 12, 2007. The Court has reviewed the moving papers and responding papers, along with supporting documentation, and for the reasons set forth below, the Court DENIES the motion.[1]

BACKGROUND

On Friday, August 4, 2006, Laura Hauck went to work, where she spoke with her brother-in-law, Larry Garlock. (Motion to Suppress Transcript, January 23, 2007, Honorable Darwin C. Hansen, Page 15:03-09). It was the last time her family would hear from her; her body was discovered on August 7, 2006. (Preliminary Hearing Transcript, September 26, 2006, Honorable Rodney S. Page, Page 19:01) On Saturday, August 5, 2006, Faye Garlock remembered that she had

[1]It is important to note that Defendant's Motion to Suppress only addressed whether the initial entry into Defendant's house was in violation of the Fourth Amendment (no arguments were made regarding State law violations). As a result, this ruling is limited to that issue.

not invited her sister, Laura, to her grandson's baptism, nor had she invited her to a family birthday party. (Suppress 39:03-08). Faye began calling Laura early Saturday morning to invite her to the various activities. (Suppress 39:13). She tried calling Laura approximately a dozen times that day, but was never able to make contact with her. (Suppress 39:20). She had also tried calling Defendant, Laura's son, approximately five to six times that day. (Suppress 40:12-14). It was a little unusual that she was never able to reach Laura; generally she was able to reach her after three or four attempts, or she would at least reach Defendant, who was often with Laura or knew where she was. (Suppress 39:14-25).

The next day, Sunday, August 6, 2007, Faye began calling Laura again early in the morning. (Suppress 40:18-19). Faye called Laura approximately a dozen times and was never able to reach her. (Suppress 41:04).

The next morning, Monday, August 7, 2006, Laura's supervisor called Larry wondering if he knew where Laura was. (Suppress 16:24). The supervisor informed Larry that Laura had not shown up for work and that she had not called to explain her absence. (Suppress 17:02-09). Larry and Faye (hereinafter "the Garlocks") thought this seemed strange because Laura was meticulously prompt for work. (Suppress 17:02-09). She was always early for work and it was out of character for her to show up late or skip the entire day without first clearing it with her supervisor. (Suppress 17:04-06).

In light of this information, Larry went to Laura's residence to see if he could make sense of the situation. (Suppress 17:22). He knocked on the door and yelled for Laura, but he did not receive any response. (Suppress 18:01-05). Shortly thereafter, Larry began searching for Laura. (Suppress 18:10-15). He went to the local car dealership to verify whether Laura had brought her car into the

shop to have work done on it. (Suppress 19:02-11). No one at the dealership had heard from Laura. (Suppress 19:11). Larry returned to Laura's residence to verify whether or not she had returned home; however, once again, no one responded to his shouts and he was not able to make contact with any persons. (Suppress 19:16-19). Subsequently, he returned home to speak to his wife about the situation. (Suppress 19:13, 19-22).

When he arrived home, Faye indicated that she had tried calling Laura and Defendant again, but no one answered the phone. (Suppress 20:14-15). In addition, she had called several other members of the family to verify whether they had heard from Laura; none had. (Suppress 2015-17) Larry called the police, explained the problem, and indicated that he and his wife were concerned about the situation. (Suppress 22:09-10). He told dispatch that Laura and Defendant were "absolute home bodies [and] never go anywhere." (Second Motion to Suppress Transcript, March 12, 2007, Honorable Darwin C. Hansen, EXHIBIT 2A and 2B, The Police Dispatch Transcript: Track 45). He also told dispatch that Laura never missed work. (Dispatch: Track 45). He explained that he and his wife had been trying to contact her for three days and it was "really not like her" not to answer their calls. (Dispatch: Track 61). He told dispatch that he was worried that Laura was missing and he was "worried that something's happened in the house." (Dispatch: Track 45, Track 65). Larry told dispatch that he would meet police at Laura's residence. (Dispatch: Track 65, Track 67). As a result, officers were dispatched to Laura's residence where Larry awaited their arrival. (Prelim 36:19-23).

Officer Brent Savage was the first to arrive at Laura's residence. He was dispatched to the residence on a "welfare check." (Prelim 6:12). When he arrived he met both Larry and Faye. (Prelim 7:05). Officer Darrell Brown arrived shortly thereafter. (Prelim 8:06). The Garlocks

informed the officers that they had not heard from Laura for several days; that they had tried calling her for the last couple of days and never heard back from her; and that they were worried something was wrong because it was "highly unusual" for them not to have heard from her for so long. (Prelim 7:10, 23; 37:15; 59:11). They explained that Laura and Defendant shared one car, and that it was not located at the residence, nonetheless Larry expressed that it was not normal for Laura to go anywhere without telling someone in their family and that he had searched all the local places where she might be. (Prelim 29: 03-10; Suppress 23: 14-22). The Garlocks also informed the officers that Laura had not been to work that day and that it was out of character for her because she was normally very meticulous about arriving to work on time. (Prelim 7:12-13; 38:01-02). Larry explained to the officers that in all the years she had worked there she had never been late, let alone missed a day of work; her job was important to her and she took it very seriously. (Suppress 27:20-24). As a result, the fact that she had completely skipped work raised serious concerns for the Garlocks. (Suppress 29:11). In addition, they informed the officers that Laura had been depressed lately. (Prelim 29:01; Suppress 25:03-05). Finally, they also informed the officers that they had knocked on her door and had not received any response. (Prelim 7:24).[2] Faye reiterated to the officers that she was worried that Laura needed help and that she felt as though Laura's condition was serious enough that she was unable to even pick up the phone to call for help. (Suppress 47:01-10).

The officers began to walk the perimeter and started knocking on the doors. (Prelim 8:04). The officers began pounding on the door, but received no response. (Prelim 8:11). As they walked around the house, they noticed a window without blinds. (Prelim 8:13). When they looked in the

[2]The officers had also been told that Laura's car was not at the residence; however, this information does not seem to be highly influential given the fact that the officers were also told that Defendant often drives the vehicle.

window, they could only see part of the kitchen. (Prelim 8:14). They did not see anybody in that area, but they did notice that a bag of cat food had been spilled. (Prelim 38:24).

The officers noticed that a second story window was open and discussed the possibility of getting a ladder to climb in the window. (Prelim 9:01). During this same time, the Garlocks were continually pressuring the officers to climb in the window in order to verify whether everything was okay. (Suppress 24:11-13). Finally, the officers decided to climb in the window. (Prelim 9:20). Three firefighters came down with the ladder, climbed to the second story window, and removed the protective screen with a Leatherman tool. (Prelim 9:24-25). Subsequently, the officers climbed up the ladder and entered the residence. (Prelim 10:01-03).

The officers began calling out to possible occupants and then began to peruse the residence in search of any persons. (Prelim 10:15-25). The officers eventually made their way down to the basement, where Laura's bedroom was located. (Prelim 12:7-12). Officer Savage approached the bed, believing that someone might be lying underneath the covers. (Prelim 13:20-21). Instead, he found a pool of red liquid, which appeared to be blood. (Prelim 13:23-25). Subsequently, Laura's body was later discovered inside a freezer located in the basement of the residence. (Prelim 19:01).

After discovering the body, Sergeant Lloyd Kilpack was made aware that Laura's car was missing from the residence and that no one was able to locate her son, Defendant. (Prelim 72:20-22). Sergeant Kilpack began investigating his whereabouts and learned that Defendant had not shown up to work for a week. (Prelim 73:01-08). As a result, Sergeant Kilpack put out an "attempt to locate" throughout the Utah region and also throughout the state of Montana.[3] (Prelim 73:11, 14-

[3]Sergeant Kilpack had recently been made aware that Defendant had recently moved to Utah from Montana; consequently, he thought it would be prudent to issue an "attempt to locate" in both states in case Defendant decided to return to Montana. (Prelim 73:14-17).

17).

In addition, Sergeant Kilpack located two credit cards while searching Laura's purse. (Prelim 76:13-14). After tracking the credit cards, Sergeant Kilpack learned that Defendant had used the credit card on the night of August 5th and August 6th to check in to a Layton Motel. Prelim 76:22-25). When Defendant checked into these motels, he used his Utah Driver's License for verification and listed his Utah residence as his permanent address on the paperwork. (Suppress 51:11-13). In addition, On Monday, August 7th, the credit card showed that he checked in to a motel in Pocatello, Idaho. (Suppress 50:11-13 citing to Exhibit 1). Subsequently, on Wednesday, August 9th, Defendant checked into a motel in Missoula, Montana. (Prelim 77:10-11; Suppress 50:11-13 citing Exhibit 1). When Defendant checked into this motel, he used his Montana Driver's License for verification and listed his old Montana residence as his permanent address on the paperwork. (Suppress 05-09). Sergeant Kilpack eventually confirmed Defendant's exact location, and he was subsequently taken into custody. (Prelim 77:20-22).

ANALYSIS

ABANDONMENT

The State asserts that Defendant abandoned any privacy interest in his house when he abandoned the premises and fled to Montana. One who abandons his property also abandons any reasonable expectation of privacy in the property. *United States v. Levasseur*, 816 F.2d 37, 44 (2nd Cir. 1987). As a result, any search and seizure of abandoned property does not violate the Fourth Amendment because the individual does not have any privacy right in the property. *Id.* In other words, a person who has abandoned his or her property does not have standing to complain of an illegal search and seizure. *State v. Rynhart*, 125 P.3d 938, 943 (Utah 2005).

Abandonment is not to be decided on the basis of property rights or leasehold interests; instead, it is a question of fact to be decided on an objective basis in light of all the relevant facts and circumstances. *Levasseur*, 816 F.2d at 44; *See also Rynhart*, 125 P.3d at 942. In the law of property, the question is whether the individual has relinquished his property interest so that another may successfully assert his superior interest. *Rynhart*, 125 P.3d at 942. "Conversely, in the law of search and seizure,... the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search us reasonable within the limits of the Fourth Amendment." *Rynhart*, 125 P.3d at 943. As a result, what the defendant abandons is his reasonable expectation of privacy in the property. *Id.*

In *Rynhart*, the Utah Supreme Court adopted a two prong test to determine when an individual has abandoned his privacy interest in his property for purposes of the Fourth Amendment. The test includes both a subjective and objective component. First, the State must establish that the property owner has not retained an expectation of privacy that society would recognize as objectively reasonable. *Id.* at 944. Second, the State must establish that the "external manifestations of the property owner's intent would lead a reasonable person to believe that the property owner had voluntarily abandoned any legitimate privacy interest in the object or place to be searched." *Id.* The property owner does not need to permanently relinquish possession to forfeit his privacy rights; it is sufficient that he or she leave an item unsecured in a public place. *Id.*

The facts pertinent to the question of abandonment are both what the officers knew at the time of the search and seizure, and also those facts that are discovered after the search, which manifest a decision not to return to the property. *Levasseur*, 816 F.2d at 44. However, in considering abandonment, it is "impossible to justify the warrantless search on the grounds of

abandonment [based on the crime committed therein] when the [crime] has not yet been proved, and a conviction cannot be used *ex post facto* to validate the introduction of evidence used to secure the same conviction." *Michigan v. Tyler*, 436 U.S. 499, 505-06 (1978).

Prong One: An Expectation of Privacy that is Recognized as Objectively Reasonable by Society.

Our nation has long viewed the home as the most private and protected of places. The home is one of four domains expressly protected by the Fourth Amendment. *Brigham City v. Stuart*, 122 P.3d 506, 511 (Utah 2005) In addition, the Supreme Court has drawn a firm line at the entrance of the house for privacy purposes. *See Payton v. New York*, 445 U.S. 573, 590 (1980).

The home is where many private and protected things are kept and members of society would expect that their things will remain safe inside the home. When individuals leave their home for a period of time, they do not anticipate, nor are they willing to recognize that those actions would cause them to forfeit all expectations of privacy in their house. That is why they take great care to lock the doors and secure their possessions when they leave. As a result, it is not reasonable to believe that society would objectively conclude that Defendant forfeited his privacy interest in his house when he took the necessary steps to secure the premise, but merely chose not sleep there on a few occasions.[4]

Prong Two: A Reasonable Person's Belief that the External Manifestations of the Property Owner's Intent are Indicative of Abandonment.

Defendant's external manifestations do not indicate that he intended to abandon his privacy

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[4]This Court does not find the fact that the second story window was open a sufficient indicia of abandonment. All of the ground level windows and doors were locked and the second story window was secured by a screen that required a ladder and a Leatherman to remove before entry was possible. As a result, this Court concludes that Defendant took the type of actions that society would view as objectively reasonable to secure his privacy interest.

interest in his property. There was testimony that Defendant left his residence and checked into a Layton Motel for two nights on August 5-6, 2006. However, when he left his residence, he locked all the ground level doors and windows to his house. In addition, Defendant came back to his residence on at least one occasions while he was sleeping in the Utah motel rooms.[5] Subsequently, Defendant left the state of Utah and traveled to the state of Montana where he checked into a motel on the night of August 9, 2006. When he checked into the Montana motel, he used his Montana Driver's License for verification and listed his old Montana address as his permanent address. Shortly thereafter, he was apprehended and taken into custody.

These limited facts are not sufficient to demonstrate a reasonable belief that Defendant intended to abandon any privacy interest in his residence. Defendant took the necessary steps to lock all the doors of his residence and secure any possession within. Moreover, even when he was sleeping in motel rooms, he still returned to his residence on at least one occasion. Moreover, the evidence does not indicate that Defendant took many, if any, personal possessions with him. Leading one to conclude that Defendant left his possessions secured at his residence in Utah.[6]

These external manifestations would lead a reasonable person to conclude that Defendant intended to maintain a privacy interest in his house. His actions indicate that he took the normal precautions to ensure his privacy. In addition, all of his private possessions remained at the house, and it is reasonable to believe that he intended to reclaim them at some point in the future. These

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[5]The officers found newspapers had been brought inside the house and were sitting near the front door; however, only Defendant and Laura had keys to the residence. (Prelim 32:06).

[6]Sergeant Killpack testified that many items were left behind in Defendant's house, including clothing, hunting supplies, food, etc. In addition, Sergeant Killpack testified that the house looked as though someone could have been returning. (Second Suppress 08:01-09:08).

external manifestations would lead a reasonable person to believe that Defendant did not abandon any privacy interests in his property.

As stated above, the mere fact that Defendant did not sleep at his residence for four nights is not indicative of an intent to abandon. It is often the case that individuals leave their residence and go on vacation without intending to relinquish their privacy interest in their house.

In addition, the fact that Defendant used his old Montana residence while securing a hotel room in Montana is also not indicative of an intent to abandon. It is often the case that individuals will use a local address when conducting business in another state in order to simplify the process. Moreover, people often use different addresses for different occasions: one might use a parent's address for important documents, but use a college address for other matters. The mere fact that Defendant used a local Montana address while checking into a motel in Montana does not lead a reasonable person to believe that he intended to abandon his residence. This is true especially in light of the fact that just days earlier, while he was staying in various motels in Utah, he used his Utah residence as his permanent address.

Moreover, the fact that Defendant did not clean any of the residue from his mother's death would not lead a reasonable person to conclude that he intended to abandon his residence. It cannot be assumed that Defendant did, in fact, commit the crime alleged in this case. *Michigan v. Tyler*, 436 U.S. 499, 505-06 (1978). As a result, the fact that Defendant did not tamper with a crime scene and clean up the evidence should not be considered in determining whether he abandoned his residence.

The State relies on *Rynhart* as support for its contention that Defendant abandoned his property interest in his residence. However, *Rynhart* is distinguishable from the instant case. From

the outset, it is important to note that *Rynhart* involved the abandonment of a vehicle, which is given fewer privacy protections than a house. *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999). In *Rynhart*, the Utah Supreme Court relied on the following evidence in its holding: "the searching officer was not confronted with any facts suggesting that Rynhart intended to retain her privacy interest in her purse or van. Rynhart did not secure her vehicle, inform either the property owner or the police of the accident, or take her purse with her when she left the scene. Instead, she left her purse in the unlocked car for more than five hours, acknowledging her interest in the property only after the search had been completed and the van had been towed to a wrecking yard." *State v. Rynhart*, 125 P.3d at 944-945. The facts of the instant case are easily distinguished from those relied upon in *Rynhart*.

First, *Rynhart* dealt with an abandoned vehicle in another person's yard. The instant case deals with a home, one of the most constitutionally protected area of privacy. Moreover, Defendant did not leave his home in another's yard. In addition, unlike *Rynhart*, in the instant case, Defendant left the doors to his house locked. In short, the facts of *Rynhart* could lead a reasonable person to believe that the defendant had abandoned her privacy interests. Rynhart left her car in a public place where people could see into the windows and verify that a purse was left in an unlocked car. At this point, Rynhart's actions show that she had no interest in protecting her purse. Conversely, the facts of the instant case deal with Defendant's private residence on his own land. He locked all the doors and took the necessary precautions to ensure that his privacy was maintained. As a result, *Rynhart* is easily distinguished from the instant case and has little applicability.

In addition, the State also relies on *United States v. Levasseur*, 816 F.2d 37 (2nd Cir. 1987). First, it should be noted that this is one of the rare cases where a court came to the conclusion that

a home had been abandoned. Normally, cases dealing with abandonment claims deal with items such as unattended motor vehicles, hotel rooms, luggage, purses, weapons or drugs discarded by fleeing suspects, or trash. This is the only case referenced by either party that deals with a house. However, the facts of this case are very unique and are easily distinguished from the instant case.

In *Levasseur*, the defendants were the subject of a decade long, nationwide investigation. They participated in underground activities, used assumed names, moved repeatedly. For example, in 1982, the defendants learned that law enforcement were close to locating them, so they deserted their Eastern Pennsylvania residences, abandoning weapons, bomb materials, and other paraphernalia. Once again, in 1984, police were closing in on the defendants, and actually located several of them. One of the captured defendants warned another defendant (Carol Manning) that the cops had surrounded his house. As a result, Manning fled her house once again. When the police finally reached the Manning residence, there was no sign of her. They knocked on the door and attempted to make contact but Manning had already left the area. Without consent or a warrant, the officers searched the residence. Manning never returned to her residence, and she continued to avoid arrest until she was eventually apprehended 6 months later in another State. Subsequently, Manning challenged the warrantless search of her house.

Levasseur is easily distinguished from the instant case. In *Levasseur*, the defendants had a history of abandoning their residence when police closed in on their location. As a result, there was a pattern of Manning abandoning her properties. Moreover, Manning had already obtained a new residence and had been living there for several months without ever returning to her old residence. To the contrary, in the instant case, Defendant has no history of abandoning his residences. Furthermore, there is no evidence that Defendant had obtained any other type of long-term residence;

he was apprehended just days after he left Utah. Instead, the facts of the instant case appear to fall far short of those in *Levasseur*. As opposed to being part of a terrorist group that had been being tracked for years, Defendant was merely a teenage boy who lived at his home. Moreover, he did not rent property so that he could easily abandon it when the police closed in on his location. Instead, he lived in his family-owned residence and had no fear of being located by the police. In fact, he had returned to his residence on at least one occasion after the alleged murder took place. As a result, *Levasseur* has little persuasive value to this Court.

In Conclusion, the State has not met its burden to prove to this Court by a preponderance of the evidence that Defendant abandoned any privacy interest in his residence. Society values the privacy of the home above almost anything else. The limited facts of this case are unpersuasive, at best, in showing that Defendant's actions showed an intent to abandon his property, or that society would be willing to recognize that Defendant abandoned his property. As a result, Defendant maintained a privacy interest in his residence when the officers entered without a warrant.

EMERGENCY AID EXCEPTION

Having found that Defendant retained a privacy interest in his house, Defendant argues that the State violated his privacy interest when police officers entered his house without a valid warrant or exception to the warrant requirement. Warrantless searches inside a home without a warrant are presumptively unreasonable. *Brigham City v. Stuart*, 126 S.Ct. 1943, 1947 (2006). However, the Fourth Amendment is subject to certain limitations, including the exigency associated with the need to assist persons who are seriously injured or threatened with such injury. *Id.* "'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" *Id.* citing *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978). This

justification is commonly known as the emergency aid doctrine. *Brigham City v. Stuart*, 122 P.3d 506, 512 (Utah 2005). Many states, including Utah, had been using a three prong test to determine whether the emergency aid doctrine applied. *Id.*; *See also State v. Davidson*, 994 P.2d 1283, 1287 (Utah App 2000). Under that test, the State was required to show the exigency of the situation by proving the following:

> (1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
> (2)The search is not primarily motivated by intent to arrest and seize evidence.
> (3) There is some reasonable basis to associate the emergency with the area or place to be searched. That is, there must be a connection with the area to be searched and the emergency.

Brigham City v. Stuart, 122 P.3d at 513; *State v. Davidson*, 994 P.2d at 1287 (Utah App 2000). Subsequently, in 2006, the United States Supreme Court slightly altered this test. In *Brigham City v. Stuart*, 126 S.Ct. 1943 (2006), the Supreme Court reiterated that "[a]n action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'" *Id.* at 1948 (emphasis in original). As a result, the Court held that the officer's subjective motivation was irrelevant, essentially removing the second prong of the test. However, the rest of the test appears to have remained intact.[7]

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[7]It should be noted that in *Brigham City v. Stuart*, 126 S.Ct 1943 (2006), the Supreme Court spoke about the emergency aid doctrine more in terms of protecting or preserving life or avoiding serious injury, and not as much in terms of locating an unconscious, semiconscious, or missing person who is feared to be injured. Specifically, the Supreme Court stated that, "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Id.* At 1947. However, in *Brigham City* the Supreme Court dealt with facts were an individual was imminently facing injury due to ongoing violence; it did not deal with facts where a person was missing and believed to be unconscious or otherwise injured. As a result, in *Brigham City*, the Supreme Court never addressed those aspects of the test. However, that is not indicative of any desire to limit the emergency aid doctrine to instances where injury is imminent. The only change the Supreme Court made to the test was to remove the subjective component. Otherwise, the test

Prong One: *Objectively Reasonable Belief that a Person is Unconscious, Semi-Conscious, or Missing and Feared Injured or Dead.*

To prevent the misuse of the emergency aid doctrine, there must be some objectively reasonable belief or indication of the probability that a person is suffering from a serious physical injury or that an unconscious, semi-conscious, or missing person feared injured or dead is in the home. *Brigham City v. Stuart*, 122 P.3d 506, 513 (Utah 2005); *see also State v. Cromer*, 51 P.3d 55, 63 (Utah App 2002). The officers need only have a reasonable basis to believe that such an emergency exists; they do not need to have probable cause. *See Davidson*, 994 P.2d at 1287.[8]

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remains intact and is still applicable when someone is believed to be unconscious, semiconscious, or missing and feared injured. The Utah Supreme Court has stated in *Davidson*, that it believes that our interpretation of the emergency aid doctrine, which includes the search of missing persons, is consistent with the United States Constitution and the Supreme Court has never stated anything to the contrary, except to remove the subjective component of the test. *See Davidson*, 994 P.2d at 1287 (stating, "We believe the emergency aid doctrine is sound and consistent with case law from both the United States Supreme Court and our own supreme court.").

[8]Defendant, relying primarily on *Henry v. United States*, 361 U.S. 98 (1959), argues that an officer must have probable cause to believe an emergency exists before he or she is entitled to enter a dwelling under the Fourth Amendment. The Court is not persuaded by this argument. First, *Henry* is not controlling on the issue because its holding was simply that probable cause is the standard of proof required to arrest a suspect without a warrant; it did not address the standard of proof required for the emergency aid exception. As a result, where the instant case deals with the standard of proof required for an officer to enter a dwelling under the emergency aid exception, *Henry* is easily distinguished. Moreover, case law clearly establishes that the standard of proof required in emergency aid situations is a reasonable basis and not probable cause. In *Davidson*, 994 P.2d 1283, the Court of Appeals stated "there is a distinction between the usually understood definition of probable cause and the 'reasonable basis' referred to in the... emergency aid doctrine." *Id.* at 1287. Moreover, in explaining the difference between cases dealing with the emergency aid doctrine and cases dealing with exigent circumstances, the Court specifically stated that "in [exigent circumstance cases] there is probable cause but no warrant, while in [emergency aid situations] there is no probable cause to justify a warrant..." *Id.* As a result, this Court is not persuaded by Defendant's arguments that the standard of proof should be probable cause, and it will analyze this issue under the reasonable basis standard, which is provided for in case law.

In the instant case the officers had an objectively reasonable basis to believe that an emergency existed and to believe that Laura could be inside the house in need of immediate assistance for the protection of life; specifically, that Laura could be inside the house in an unconscious state, semiconscious state, injured, or dead.

The officers knew that Laura had been missing for days. They knew that her family had not been able to get a hold of her and that she had not returned their calls for at least three days. In addition, they were also not able to reach her son. Both of these facts were unusual and out of character for Laura, especially in light of the fact that both individuals carried cell phones, which are easily accessible. The Garlocks told the officers that they were normally able to get a hold of her either on her cell phone or on her son's cell phone. However, this wasn't the only behavior that could reasonably lead one to believe that Laura was in trouble. In addition to those facts, Laura had also not shown up for work. This was entirely out of character for her. She never missed a shift without calling ahead and confirming her absence with her boss and she was known for arriving to work early for every shift. Even if she had shown up for work a few minutes late it would have been out of character for her, but when she failed to show at all, without explanation, that was a red flag to her family that something was wrong. In addition, the family did a limited search of the surrounding area. Larry went to the local car shop to see if something had happened to Laura's car to cause her to be late to work. Larry also went to Laura's residence, and noticed that cat food and been spilled, but the mess was never cleaned. In light of these circumstances, Faye called the rest of the family to see if any of them had heard anything to explain these abnormalities. None of the other family members had any explanation for Laura's actions and none of them had heard from Laura. In addition to these facts, there was also the lingering knowledge that Laura had been

depressed recently. It is the combination of all of these abnormalities, which were explained to the officers, that made it objectively reasonable to believe that Laura could be unconscious, semiconscious, injured, or dead. Again, these facts do not need to rise to the level of probable cause, the facts need only make the belief that Laura was hurt or injured reasonable. *See Davidson*, 994 P.2d at 1287. Based on the totality of all of these facts, it is at least reasonable to believe that Laura may have acted upon her depression and done something to hurt herself that made her incapable of getting up to answer the phone, clean up the cat food, or go to work. The mere fact that her car was missing was not sufficient to dispel these fears because it was the only vehicle that both she and her son were driving; consequently, it was logical to believe that her son could have taken the car and that Laura was inside the house in need of help.[9] As a result, the totality of the circumstances show that, based on Laura's unusual behavior, it was reasonable to believe that she could be unconscious, semiconscious, or missing and feared injured or dead.[10]

Prong Two: *A Reasonable Basis to Associate the Emergency with the Area or Place to be Searched.*

It is important to note that, as stated above, there is a distinction between the usually understood definition of probable cause and the "reasonable basis" referred to in the second (what used to be third) prong of the emergency aid doctrine. *Davidson*, 994 P.2d at 1287. Probable cause refers to the probability that contraband or evidence of a crime will be found. *Id.* The emergency

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[9]The fact that her car was not there could make the need for external help more pervasive because her son could have left with the car and if Laura was hurt inside the house, one could reasonably believe that her son was not there to help her.

[10]Whether or not the officers believed that Laura was injured or unconscious inside the house is not relevant to this inquiry. As stated above, the Supreme Court removed the subjective component from the emergency aid test.

aid doctrine does not require probable cause to justify a warrantless search because the police officer is acting in his non-law enforcement capacity. *Id.* Instead, there need only be "some reasonable basis to associate the place searched with the emergency." *Id.*

As stated above, it was objectively reasonable to believe that Laura could be unconscious, semiconscious, or otherwise missing and feared injured, and it was also reasonable to believe that she could be suffering any of these travesties in her house. None of the family members were aware that Laura intended to leave her house and go anywhere over the weekend. In addition, Larry did a cursory search of the surrounding area, including the local car shop and could not find her anywhere. Furthermore, Larry had told the officers that Laura and Defendant were "home bodies" and that it would be strange for them to be anywhere but at their house. As a result, it is reasonable and natural to begin the search at Laura's residence. Laura's residence "was a reasonable place to associate with the emergency and legitimate place to begin the search for [her]." *Kansas v. Jones*, 947 P.2d 1030, 1039 (Kan. App. 1997).

The instant case is similar to *Jones*, 947 P.2d 1030. In *Jones*, the Shawnee police were dispatched to a welfare check. Anthony and Donna Flamez were concerned about their son Tony. They had made plans for dinner with Tony on March 22, 1995, but he had never shown up and they had not seen him since. The Flamez's had called Tony several times and left him several messages, but he never returned their calls. The Flamez's said this was unusual behavior for Tony. They also said that he had recently become acquainted with someone of whom he seemed to be afraid. The officers went to Tony's apartment and knocked on his door. When they received no response, they had an employee unlocked Tony's apartment and the officers entered. Upon entry, the officers saw two individuals smoking crack inside the apartment. They moved to suppress the evidence as being

obtained in violation of the Fourth Amendment. The Kansas court allowed the evidence to be admitted under the emergency aid doctrine. The court found the fact that Tony had *uncharacteristically* missed dinner and his failure to return any calls was sufficient for the officers to believe that he could be injured. In addition, the court found that Tony's residence was the most reasonable place to associate with the emergency; the house is a legitimate place to begin a search.

The instant case is similar to *Jones* insomuch that Laura's uncharacteristic behavior of skipping work and failing to return any phone calls for three days was sufficient to lead an objectively, reasonable person to believe that she could be unconscious, semiconscious, injured, or dead. Moreover, similarly to *Jones*, her residence was the most reasonable place to begin the search given the fact that she was a "home body" and the Garlocks had either already searched other logical places she might be or contacted family members and her work to ensure that she was not there.

In conclusion, there was an objectively reasonable basis to believe that an emergency existed. In addition, there was a reasonable basis to believe that if Laura was in need of assistance, she was likely still inside her house. As a result, the police were justified in using the emergency aid doctrine to bypass the warrant requirement of the Fourth Amendment.[11]

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[11]In light of the fact that this Court has ruled there was no Fourth Amendment violation, there is no reason to address any arguments regarding inevitable discovery as that doctrine is only used to correct Fourth Amendment violations. There was no Fourth Amendment violation in this case; consequently, there is no need to analyze whether the evidence could have been inevitably discovered.

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Suppress Evidence is DENIED. As a result, a pretrial conference is scheduled in this matter for the 14th day of May, 2007.

DATED April 4, 2007.

BY THE COURT:

DARWIN HANSEN
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I certify that I sent a true and correct copy of the foregoing ruling on Defendant's Motion for Summary Judgment to the following, postage pre-paid, on the 4th day of April, 2007:

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